



REISSUE LITIGATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Continuation Reissue)

Patent Application of:)

Uber, III et al.)

Group Art Unit: 3737

Appln. No.: 09/545582)

Examiner: R. Smith

Filed: April 7, 2000)

Title: **PATIENT INFUSION SYSTEM
FOR USE WITH MRI**)

* * * * *

September 30, 2002

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Hon. Commissioner
of Patents and Trademarks
Washington, D.C. 20231

Sir:

This Supplemental Information Disclosure Statement (“IDS”) is being filed to comply with the provisions set forth in Manual for Patent Examining Procedure (“M.P.E.P.”) § 2001.06(c), entitled “Information From Related Litigation.” In particular, this IDS supplies to the Office information concerning allegations of inequitable conduct raised by Defendants in a pending litigation concerning related U.S. Reissue Patent No. Re. 37,602 (“the ‘602 patent”). The litigation, entitled “Medrad, Inc. v. Tyco Healthcare Group LP, Mallinckrodt, Inc., Liebel-Flarsheim Co., and Nemoto Kyorindo Co., Ltd.,” is pending before the United States District Court for the Western District of Pennsylvania and bears Docket No. 01-1997-DEZ. (Hereinafter, the case will be referred to as “the ‘602 Litigation.”) A Notice of Related Litigation is being submitted herewith to apprise the Office of the ‘602 litigation.

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In the discussion that follows, the Applicants outline the Defendants' allegations and Medrad's response to those allegations. So that the Office may more readily understand the documents appended hereto, the Applicants respectfully point out that the '602 patent is a reissue patent of United States Reissue Patent No. 36,648 ("the '648 patent"). The '648 patent is a reissue of United States Patent No. 5,494,036 ("the '036 patent"). The '036 patent issued on February 27, 1996. The '648 patent issued on April 11, 2000. The '602 patent issued on March 26, 2002.

In the '602 Litigation, the Defendants have asserted several defenses to the charge of infringement of the '602 patent. Among them, the Defendants have alleged that the '602 patent is unenforceable for inequitable conduct. The full breadth of the allegations are detailed in DEFENDANTS', TYCO HEALTHCARE GROUP LP, MALLINCKRODT, INC., AND LIEBEL-FLARSHEIM CO., ANSWER AND COUNTERCLAIM TO SECOND AMENDED COMPLAINT. (A copy is appended as **Exhibit A**, hereto.) Specifically, the Applicants respectfully direct the Office's attention to paragraphs 32-36, which begin on page 13 of **Exhibit A**. Medrad has responded to these allegations in PLAINTIFF MEDRAD'S ANSWER TO DEFENDANTS' COUNTERCLAIM, a copy of which is appended hereto as **Exhibit B**. Medrad has denied the allegations of inequitable conduct. (See, e.g, paragraphs 32-36 (incorporated into paragraph 40) and paragraph 93 of **Exhibit B**.)

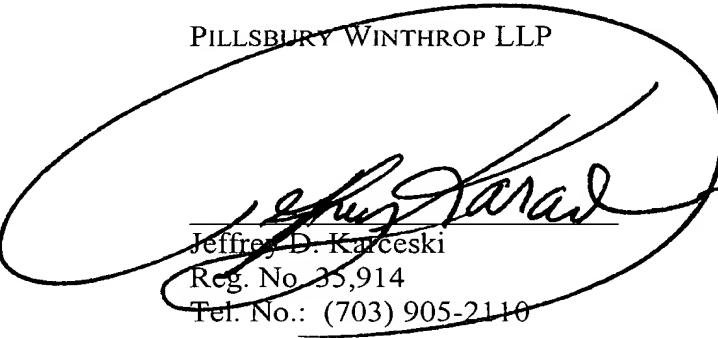
In the '602 Litigation, the Defendants also assert certain prior art as relevant to the '602 patent. In this regard, the Applicants respectfully direct the Office's attention to DEFENDANTS', TYCO HEALTHCARE GROUP LP, MALLINCKRODT INC., AND LIEBEL-FLARSHEIM COMPANY, SUPPLEMENTAL RESPONSE TO PLAINTIFF MEDRAD'S SECOND SET OF INTERROGATORIES (NO. 6), a copy of which is appended hereto as **Exhibit C**. With respect to subparagraphs a-g to the Supplemental Response, Medrad provides the following additional information. As to subparagraph a, the

Defendants' Answer and Counterclaim to Second Amended Complaint is attached hereto as **Exhibit A**. For subparagraphs b-d, the documents listed are subject to a Protective Order in International Trade Commission Investigation No. 337-TA-434. If the Office would like to review copies of the listed documents, please inform the Applicants, who will request that the parties to that Investigation agree to lift the Protective Order and, where necessary, agree to provide the documents so as to permit them to be submitted to the Office. With respect to subparagraph e, the Applicants respectfully submit that all of the prior art considered in the Opposition to European Patent No. 0655220 has been supplied to the Office in an IDS. Moreover, each of the references listed in subparagraph f also have been supplied to the Office by an IDS. Finally, concerning paragraph g, the facts surrounding the allegations set forth were submitted to the Office in the May 31, 2002 IDS.

Consideration of the foregoing is earnestly solicited. When considered, the undersigned would appreciate the Examiner's acknowledgement of this IDS by signing the attached sheet and returning it to the undersigned.

Respectfully submitted,

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ACKNOWLEDGEMENT

By signing below and returning a copy to the Applicant, the Examiner acknowledges that he/she has considered the information presented above in evaluating the patentability of the claims in the above-identified patent application:

Examiner's Signature

Date

Examiner's Printed Name